

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12608 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

A M T S

Versus

A'BAD GENERAL MAZDOOR UNION & ORS

Appearance:

Mr.Mazgoankar for MR SN SHELAT for Petitioner
MR TR MISHRA for Respondent No. 1

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 11/02/99

ORAL JUDGEMENT

1. One Shri Taljabhai Nathubhai was working with Ahmedabad Municipal Transport Service ('A.M.T.S." for short) as a driver since 1.4.61. While discharging his duties in the year 1978 on 30.11.78 he fainted on the steering. He was taken to L.G.Hospital and after receiving treatment there, as an outdoor patient he recovered and after recovery he approached A.M.T.S. with the Certificate of the Doctor that as he was suffering

from heart ailment and he may be given light work instead of the work of a driver. The A.M.T.S. created a post of the Peon and appointed him on the said post of Peon on 1.9.79 and he was paid the salary in the pay scale prescribed for Peon i.e. Rs.196-232 instead of the pay scale of the post of driver i.e. Rs.260-430. Ahmedabad General Mazdoor Union (Gujarat) raised an industrial dispute claiming entitlement of the pay scale of driver to espouse the cause of the aforesaid workman for the said purpose. This dispute was adjudicated by the Industrial Tribunal in Reference (IT) No.818/83. The Industrial Tribunal decided the Award on 22.7.93 and directed that the workman has to be treated to be continuing in service and has to be paid salary for the post of driver and the amount of salary of the post of Peon paid to him be deducted from the amount of salary of the post of driver and the difference payable to him may be paid.

2. Aggrieved from the Award dt.22.7.93 passed by the Gujarat Industrial Tribunal, the A.M.T.S., preferred this Special Civil Application on 11.10.93. As the luck could have it, the workman expired immediately thereafter on 28.10.93 and, therefore, his legal representatives i.e. widow and four sons were brought on record.

3. I have heard learned counsel for both the sides and I have gone through the impugned award. A reading of para 12 of the Award shows, on the basis of the deposition Exh.31 made before the Industrial Tribunal, that one Shantilal Dholaji was working as a driver earlier and was now working as a Peon because of his blurred vision, but he is being paid as a driver; one Kantibhai was working as a conductor and because he was suffering from T.B. he was working as a Peon and was being paid salary of conductor. It further appears from the contents of para 12 of the impugned Award that there are more than 100 cases of this type. This position was not challenged by the A.M.T.S. and although the record relating to Shantilal Dholaji, Kantibhai and other cases, which was in the custody of A.M.T.S. was sought to be produced by the Union before the Industrial Tribunal through Application Exh.12, the A.M.T.S. failed to produce these records. The Industrial Tribunal on that basis drawn an adverse inference. It is, therefore, clear that the A.M.T.S. failed to explain the disparity practised by it in identical cases. The Industrial Tribunal had also taken note of the fact that the deceased workman had suffered the attack while he was on duty in the year 1978 and Doctors had certified that light work should be given to him. One fails to

understand as to how the body like A.M.T.S., which is functioning as an agency or instrumentality of the State, could practice such a disparity amongst its own similarly situated employees. If other employees, who were earlier working as driver or conductor and who were now working as Peon for reasons of health, were being paid salary of the respective posts held by them earlier although their services were utilized on the post of Peon on the ground of health i.e. in one case of driver for the blurred vision, in another case of conductor for the reason that he was suffering from T.B., how the respondent workman could be subjected to a hostile discrimination in violation of Articles 14 and 16 of the Constitution of India, merely because he had approached with the Certificate of a Doctor that he may be given light work.

4. I find that the view taken by the Industrial Tribunal does not suffer from any infirmity whatsoever and the Award passed by the Industrial Tribunal seeks to render substantial justice between the parties and does not warrant any interference by this Court. There is no force in this Special Civil Application and whereas the workman has already expired, all pecuniary benefits arising out of this Award shall be paid to the legal representatives of the deceased workman at the earliest possible opportunity but in no case later than 30.4.99. This Special Civil Application fails and the same is hereby dismissed. Rule is hereby discharged. No order as to costs.